off-peak traffic, with charges assessed only for peak-period traffic.[45] There are several drawbacks to such an approach: (1) There are likely to be significant differences between the times of peak demand for wireline and wireless services, such that the application of an off-peak bill and keep arrangement would not occur concurrently on both sides of the interconnection;[46] (2) the initial and recurring costs associated with establishing and maintaining procedures to measure traffic during peak periods would need to be incurred in any event, largely eliminating the efficiency benefits of bill and keep if limited to off-peak periods; and (3) off-peak users should be making some (non zero) payment toward recovery of capacity costs.[47]

Although the exchange of traffic between CMRS providers and incumbent LECs is not yet balanced, the FCC should adopt bill and keep as an interim pricing model for CMRS-LEC mutual compensation for several reasons: (1) incumbent LECs have failed to comply with the FCC's directives regarding mutual compensation; (2) the market power of the incumbent LECs means that any delay in implementing a pricing model benefits the incumbent at the

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[45] NPRM at para. 67.

[46] Peak demand for cellular services often occurs during morning and evening rush hours when demand for landline calling is relatively light; conversely, the peak "busy hour" for most landline central offices occurs during the mid-morning period, when cellular traffic is typically well below peak rush hour demand.

[47] A bill and keep arrangement limited to off-peak periods where charges based upon call origination at other times amounts to a time-of-day sensitive charging scheme with an off-peak charge of zero. There is neither a basis nor precedent for such a pricing arrangement.

expense of CMRS providers and therefore it is essential to identify a measure that can be readily implemented; (3) bill and keep compensation and changing market conditions may cause traffic to become more in balance; and (4) bill and keep causes no administrative burdens and avoids the costly establishment of systems to measure and bill traffic. Therefore, bill and keep should be adopted as an interim measure in order to equalize the skewed bargaining power of CMRS providers and incumbent LECs expeditiously, and also to provide an opportunity to determine whether the traffic imbalance that exists today between mobile and landline networks will change.

b. Bill and keep should be adopted as a long-term pricing model for CMRS-LEC interconnection only if CMRS providers can demonstrate that they have achieved co-carrier status.

Bill and keep is an appropriate model as an interim measure to redress the unequal bargaining position of incumbent LECs and CMRS providers, and to promote the development of a robust CMRS industry, but it is not necessarily an appropriate long-term model. The future applicability of bill and keep depends greatly upon whether CMRS providers assume the obligations and requirements that incumbent LECs and CLECs fulfill and also on the actual balance of traffic that is exchanged between CMRS and LEC networks. As noted earlier, there are several historical, legal, and pricing distinctions between CMRS providers and other local exchange carriers[48] that must be reconciled before bill

[48] See supra Section II.

and keep would be appropriate as a long-term arrangement for CMRS-LEC mutual compensation.

Furthermore, the industry may adopt pricing schemes such as so-called "sender-pay" schemes or otherwise modify the way that CMRS calls are rated so that the traffic exchange between landline and mobile networks becomes more balanced. If traffic continues to be skewed, however, the Commission should adopt a cost-based pricing model for LEC-CMRS mutual compensation, consistent with the recommendations set forth in the section above that discusses pricing principles.

c. Bill and keep remains entirely appropriate both as a short-term and long-term pricing model for interconnections between incumbent LECs and CLECs.

Regardless of the interconnection compensation arrangements adopted for the CMRS industry, either interim or long-term, the characteristics of the facilities-based CLEC industry render the bill and keep methodology appropriate for CLEC-LEC interconnections. CLECs typically price their services competitively with CLEC services and furthermore, as discussed above, must assume certain obligations and duties under the 1996 Act. Therefore, bill and keep is entirely appropriate both as a short-term and long-term pricing model for interconnections between incumbent LECs and CLECs since there is a clear co-carrier relationship; the CLEC's service represents a true substitute for the incumbent LEC's service; and, beyond an

initial start-up period, traffic can be assumed to be roughly in balance.[49]

d. The FCC should maintain flexibility for CLECs and CMRS providers to justify costs that differ from those of the LEC.

The FCC seeks comment on its tentative conclusion that LEC-CMRS interconnection rates should be symmetrical[50] recognizing that LEC and CMRS networks may have different technologies with different costs.[51] The FCC should retain the flexibility to allow a CLEC or CMRS provider to justify costs that differ from those of the LEC. If other carriers concur with the incumbent carriers' rates, there should be no need for the FCC to investigate such rates; however, if any carrier so chooses, it should have the option to demonstrate that its costs exceed those of the incumbent and therefore the non-incumbent (whether it is a CMRS provider or a CLEC) should have the option to seek higher interconnection rates.

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[49] Without seamless local number portability, however, customers may in some cases add CLEC access lines for originating outgoing calls, but retain their incumbent LEC service for receiving incoming calls. In such cases, the traffic flows will not be in balance, because calls terminated to CLEC customers will actually be delivered directly by the LEC via the customer's LEC incoming line. The presence of such imbalances is not attributable to any action on the part of the CLEC, and can be expected to correct itself once true local number portability becomes available.

[50] NPRM at para. 78.

[51] Id. at para. 79.

B. Implementation of Compensation Arrangements

1. Negotiations and Tariffing

TW Comm concurs with the FCC that information about interconnection compensation arrangements should be made publicly available.[52] Compensation arrangements between incumbent LECs and CMRS providers should be governed by tariffs, so that the same nondiscriminatory rates are available to all competitors and can be subject to public scrutiny and review.

2. Jurisdictional Issues

The Communications Licensing and Spectrum Allocation Improvement Act, Title VI of the Omnibus Budget Reconciliation Act of 1993,[53] amended Section 332 of the Communications Act of 1934 ("Communications Act of 1934"),[54] creating a new regulatory classification designated as "commercial mobile services."[55] TW Comm supports the Commission's interpretation that "Section 332 explicitly preempts state regulation in this area to the extent that such regulation precludes (or effectively precludes) entry of CMRS providers."[56] This is in stark contrast to the more delicate balance between the federal and state jurisdiction over landline interconnection issues that is set forth in the 1996

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[52] Id. at para. 95.

[53] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A) and § 6002(b)(2)(B), 107 Stat. 312 (enacted August 10, 1993).

[54] Communications Act of 1934, as amended, 47 U.S.C. § 332.

[55] 47 U.S.C. § 332(c)(1).

[56] NPRM at para. 111 (footnote omitted).

Act. Section 332 clearly reflects an intent by Congress to foster the development of a nationwide wireless network.[57] When considering CMRS interconnection arrangements generally, and in particular when considering the compensation principles for those arrangements, preemption is necessary to implement policies deemed essential to the national interest.[58] Unlike the depreciation rates and methods at issue in Louisiana PSC, the use of cost allocation and accounting techniques to separate the interstate and intrastate spheres of jurisdiction for the purposes of establishing guidelines for CMRS-LEC interconnection is not feasible.[59]

As noted earlier, the 1996 Act preempts inconsistent state regulation in this area. Congress specifically excluded CMRS providers from the definition of local exchange carrier in the 1996 Act[60] (thus exempting CMRS providers from the obligations that the 1996 Act imposes on LECs).[61] In addition, Section 705

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[57] As emphasized throughout this document, there are many factual differences between wireless networks and landline networks that affect interconnection issues. For example, wireless networks are simply not designed to accommodate as much terminating traffic as originating traffic.

[58] See Louisiana Public Service Comm'n v. Federal Communications Comm'n, 476 U.S. 355 (1986).

[59] Id. at 376.

[60] 1996 Act at Sec. 3(a)(44) (to be codified at 47 U.S.C. § 153(a)(44)).

[61] Id. at Sec. 251(b). The term "telecommunications carrier", as defined in the Act, does include CMRS providers. Id. at Sec. 153(b)(49).

of the 1996 Act expressly limits the obligation of most CMRS entities to provide equal access to interexchange carriers.[62]

There is no question that the Commission has the authority to mandate the terms and conditions of local interconnection arrangements between CMRS providers and incumbent LECs. While the 1996 Act encourages negotiation of individual carrier interconnection arrangements, with provision for compulsory arbitration in the absence of voluntary agreement and state commission approval, the 1996 Act reserves for the Commission authority to generically determine the requirements for reasonable interconnections and preempts state regualtory actions that are inconsistent. Moreover, Section 253(e) includes an explicit reservation of FCC authority to regulate the entry of CMRS.[63]

Further, the broad grants of authority found in Sections 1, 7, 201, and 202 of the Communications Act of 1934 give the Commission responsibility for ensuring that CMRS interconnection arrangements provide reasonable compensation to participating carriers.[64] Sections 1 and 7 direct the Commission to make available rapid, efficient and nationwide communications[65] and to encourage the provision of new technologies and services.[66]

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62 Id. at Sec. 705 (to be codified at 47 U.S.C. § 332(c)(8)).

63 Id. at Sec. 253(e).

64 47 U.S.C. §§ 151, 157, 201 and 202.

65 47 U.S.C. § 151.

66 47 U.S.C. § 157.

Section 201 requires common carriers engaged in interstate or foreign communications to establish reasonable charges for the services provided.[67] The Commission's responsibility over compensation principles for CMRS interconnection arrangements also flows from Section 202 of the Communications Act of 1934, which requires that charges, practices, classifications, regulations, facilities, and services of common carriers not be unreasonably discriminatory.[68] When the Commission considered the imposition of interconnection obligations on CMRS providers, it expressly recognized the protection that Sections 201 and 202 of the Communications Act of 1934 offer to CMRS providers:

> CMRS providers are protected from unjust and unreasonable charges, practices, classifications and regulations in connection with communications services under Section 201(b), and from unjust and unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with such service under Section 202(a) of the Act.[69]

In addition, in the CMRS Second Report, the Commission appropriately identified LEC obligations to establish interconnection compensation arrangements with CMRS providers that are consistent with Sections 201 and 202 of the Communications Act of 1934.

> [W]e require that LECs shall establish reasonable charges for interstate interconnection provided to

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[67] 47 U.S.C. § 201.

[68] 47 U.S.C. § 202.

[69] In re Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Notice of Proposed Rulemaking, 10 FCC Rcd 10666, para. 39 (1995).

> commercial mobile radio service licensees. . . . In a complaint proceeding, under Section 208 of the Act, if a complainant shows that a LEC is charging different rates for the same type of interconnection, then the LEC shall bear the burden of demonstrating that any variance in such charges does not constitute an unreasonable discrimination in violation of Section 202(a) of the Act.[70]

Thus, as the Commission has recognized, it is well within the Commission's statutory authority to establish and enforce specific federal requirements within which compensation for LEC-CMRS interconnection arrangements should occur.

Beyond the barrier of entry issue, it is important for federal and state policies regarding CMRS interconnection to be harmonious. TW Comm supports the NPRM's third proposal, to adopt specific federal requirements to govern interstate and intrastate LEC-CMRS interconnection arrangements. By adopting this approach, the Commission will establish the required uniform approach for mutual compensation for all traffic. Any state regulation should be limited to the facilities connection between

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[70] CMRS Second Report, 9 FCC Rcd at para. 233. See also In re Matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking, 9 FCC Rcd 5408, para. 132 (1994)("In defining LEC interconnection to CMRS providers, we have determined that 'reasonable interconnection' should include offering the type of interconnection chosen by a carrier . . . . We also have previously concluded that dissimilar charges for similar services may be unjustly discriminatory in violation of Section 202(a) of the Act, depending on the facts of a particular case.").

the end office of a landline network and the MTSO of a cellular network.[71]

The Commission should not adopt a federal interconnection policy framework that merely recommends that states voluntarily follow those federal guidelines. Without mandatory federal policies, states may choose not to follow the federal guidelines and their separate, possibly inconsistent, requirements would serve as barriers to the development of the rapid deployment of wireless and the promotion of a competitive nationwide market for CMRS. In addition, state regulation may affect interstate service dramatically. Uniformity on a national level is both necessary and in the public interest.

To the extent that the Commission decides to delegate some of its authority to the states, the Commission could implement a variation of Option Two. In that event, if the Commission chooses not to preempt state involvement entirely, it should provide state public regulatory authorities with minimal leeway to develop specific interconnection compensation arrangements.

All Commission standards and guidelines must be sufficiently detailed to ensure that state regulations regarding interconnection arrangements between LECs and CMRS providers with respect to intrastate services do not create de facto barriers to competitive interstate services. Although the FCC may decide to

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[71] The extent to which facilities connect the MTSO to the end office of a landline network is an intrastate issue. However, in such an instance, the state would not be regulating the cellular business but instead, would be regulating intrastate wireline service.

offer some flexibility, providing the states with the opportunity to seek alternate means of implementing specific elements of arrangements that remain within the federal governments overall policy parameters, the Commission must maintain a supervisory role. Just as federal policies will influence the states' alternate means of implementing specific elements of the arrangements, state policies may affect federal developments.[72] Therefore, the regulations established to set mandatory guidelines for the compensation arrangements for LEC-CMRS interconnection must be implemented consistently on both the federal and state level.

Providing states with a role in the implementation process is consistent with previous instances when the Commission recognized the value of regulatory actions that consider local circumstances and enable individual states to take different approaches.[73] For example, in the Expanded Interconnection Proceeding, the Commission decided not to preempt existing state

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[72] In the Expanded Interconnection proceeding, the Commission emphasized that it did not propose to preempt state authority over intrastate access but that it recognized that federal policies may influence the development of access competition at the state level, just as state policies may affect federal developments. In re Expanded Interconnection with Local Telephone Company Facilities, Notice of Proposed Rulemaking and Notice of Inquiry, 6 FCC Rcd 3259, para. 67 (1991).

[73] See In re Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Eighth Order on Reconsideration, 10 FCC Rcd 5179 (1995)("Given its knowledge of local conditions and its experience with the cable operator, the local franchising authority often will be in the best position to assess the relative importance of these criteria and to gather the relevant facts accordingly.") Id. at para. 20.

programs when implementing its federal policy. In discussing the rationale behind this decision, the Commission expressly recognized the value of the states' role:

> [A] number of states have played a leadership role in shaping the development of expanded interconnection. We have learned much from these state initiatives, which demonstrate the continuing vitality and importance of the states' role as laboratories for regulatory innovation.[74]

The Commission could take a similar approach in this instance and take those steps necessary to prevent state LEC-CMRS interconnection compensation arrangements from serving as de facto barriers to market entry.[75]

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[74] In re Expanded Interconnection with Local Telephone Company Facilities, Amendment of the Part 69 Allocation of General Support Facility Costs, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, para. 253 (1992).

[75] Thus, properly implemented, Option Two could provide the necessary uniformity in the Commission's regulation of the interconnection arrangements between LECs and CMRS providers but also provides states with the freedom to adopt specific arrangements to fit their particular needs. Based on its extensive knowledge about the CMRS providers within the state and about the level of competition in the state's local exchange markets, the state commission may be in the best position to monitor interconnection arrangements and to impose additional obligations when local conditions warrant. In particular, states are likely to be more familiar than federal policymakers with the details of the factors influencing compensation levels within that state, including the rate design of incumbent LECs, and the network capabilities of the LECs. Moreover, state commission resources and personnel may be better suited to identify those instances where local conditions warrant additional obligations. Thus, the diversity of needs in different areas of the country may require input on the interconnection arrangements from the state and local levels.

IV. Application of These Proposals

The NPRM asks whether the policies developed in this proceeding should apply more narrowly within the CMRS industry, specifically whether "any technical or economic similarities or differences among CMRS services ... would warrant similar or different treatment."[76] The NPRM seeks comment on whether in this notice it should consider interconnection arrangements between LECs and (1) broadband PCS providers only; (2) broadband PCS, cellular telephone, satellite telephony, interconnected SMR, and other CMRS service providers that offer two-way, point-to-point voice communications that could compete with LEC landline telecommunications services; or (3) all CMRS providers,[77] noting:

> Differential treatment among CMRS providers in the critical area of interconnection could be interpreted as inconsistent with our overall policies with respect to CMRS. On the other hand, some of the proposals in this Notice might not be in the public interest if applied to CMRS providers that do not compete with LEC services.[78]

Mutual compensation only makes sense for those situations where there is a potential for two-way telecommunications services. Therefore, the FCC should apply the policies and pricing principles for mutual compensation only to the second of the three categories that it identifies, i.e., to "broadband PCS,

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[76] NPRM at para. 118.

[77] Id. at paras. 2, 118-121.

[78] Id. at para. 121.

cellular telephone, satellite telephony, interconnected SMR, and other CMRS service providers that offer two-way, point-to-point voice communications that could compete with LEC landline telecommunications services."[79]

CONCLUSION

TW Comm is mindful of the Commission's goal of identifying an interim approach that can be readily implemented while the Commission explores long-term options[80] TW Comm also is mindful of the Commission's concerns that cost studies could be contentious and time-consuming.[81] Based upon current conditions, TW Comm recommends that the Commission adopt bill and keep as an interim model and should it be determined for the reasons discussed above that it is inappropriate as a long-term model, TW Comm recommends a cost-based approach for setting interconnection rates between LECs and CMRS providers, whereby mutual compensation rates would be usage-sensitive and reflect each carriers' respective costs of termination. TW Comm concurs with the FCC that the dedicated transport facilities used to connect LEC and IXC networks are similar (or identical) to those connecting incumbent LEC and CMRS networks, and that therefore LECs should be allowed to recover the costs of the facilities

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[79] Id. at para. 118.

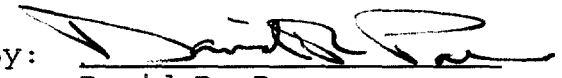
[80] Id. at paras. 58-59.

[81] Id. at para. 57.

based upon the dedicated transport rates extant in their access tariff.[82]

Respectfully submitted,

TIME WARNER COMMUNICATIONS HOLDINGS, INC.

By: 

David R. Poe
Catherine P. McCarthy
Yvonne M. Coviello

Its Attorneys

LeBOEUF, LAMB, GREENE &
MacRAE L.L.P.
1875 Connecticut Avenue, N.W.
Washington, DC 20009-5728
TEL: (202) 986-8000

Donald F. Shepheard
Time Warner Communications
Holdings, Inc.
300 First Stamford Place
Stamford, Connecticut 06902

Economic Consultants:
Dr. Lee L. Selwyn
Susan M. Baldwin
Economics and Technology, Inc.
One Washington Mall
Boston, Massachusetts 02108

Dated: March 4, 1996

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[82] Id. at para. 64.

APPENDIX A

A regression analysis of LEC accounting data relating to overhead expenses to total direct (non-overhead) costs derived from public FCC reports confirms that "common costs" are variable, volume-sensitive, and may include "unassignable" costs arising from inefficiencies arising out of operating practices and/or obsolete plant. Corporate Operations Expenses[83] exhibit a strong linear relationship with aggregate direct costs, at a very high level of statistical significance. The FCC routinely collects LEC operating expense and other Part 32 accounting data through the Form M reports that each Tier 1 LEC is required to submit annually. These are summarized by the Commission in a compendium of data known as Statistics of Communications Common Carriers (SOCC), which is published annually by the FCC. The Tier 1 carriers for which data are provided range in size from small, independent operating companies (Cincinnati Bell Inc., Rochester Telephone Co. Inc., Southern New England Telephone Co.) to the largest regional Bells (BellSouth Corp., Southwestern Bell Telephone Co.). Some of the RBOCs report on a region-wide basis, while others report by operating company, which in some cases embraces a single state (e.g., the five Ameritech and seven Bell Atlantic companies report separately for each jurisdiction). This range of company sizes and reporting scopes presents the

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[83] Specifically, these include Accounts 6711 (Executive), 6712 (Planning), 6721-6728 (Accounting and Finance, External Relations, etc.), 7370 (Special Charges), 7540 (Other Interest Deductions).

opportunity to test the hypothesis that overhead costs varied directly with direct costs. A strong statistical correlation would indicate that such a direct, proportionate relationship is present. These are summarized on Figure 1 in the attachment to these comments; Table 1 presents the actual data that used in the regression model. The coefficient of determination, R^2, is 0.9382, high by any standards but particularly so for cross-sectional data. The *t*-statistic on the X coefficient (the explanatory variable, Total Direct Expenses) was 20.6266, indicating that the coefficient approaches statistical certainty.[84] Finally, the *t*-statistic on the intercept term, 0.0130, indicates that the intercept is not significantly different from zero. That is, the regression line goes through the origin (0,0) point, indicating that the relationship between direct costs and overheads is both linear and proportionate.

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[84] We do not have in our possession a statistics text with a Table of *t*-statistics that goes this high, and indeed do not believe that such a published table even exists. The highest value shown in the tables we have, for a *t*-statistic of 2.7 with 28 degrees of freedom, is at the 99% confidence level. The relationship identified here is, quite literally, "off the chart".

Figure 1

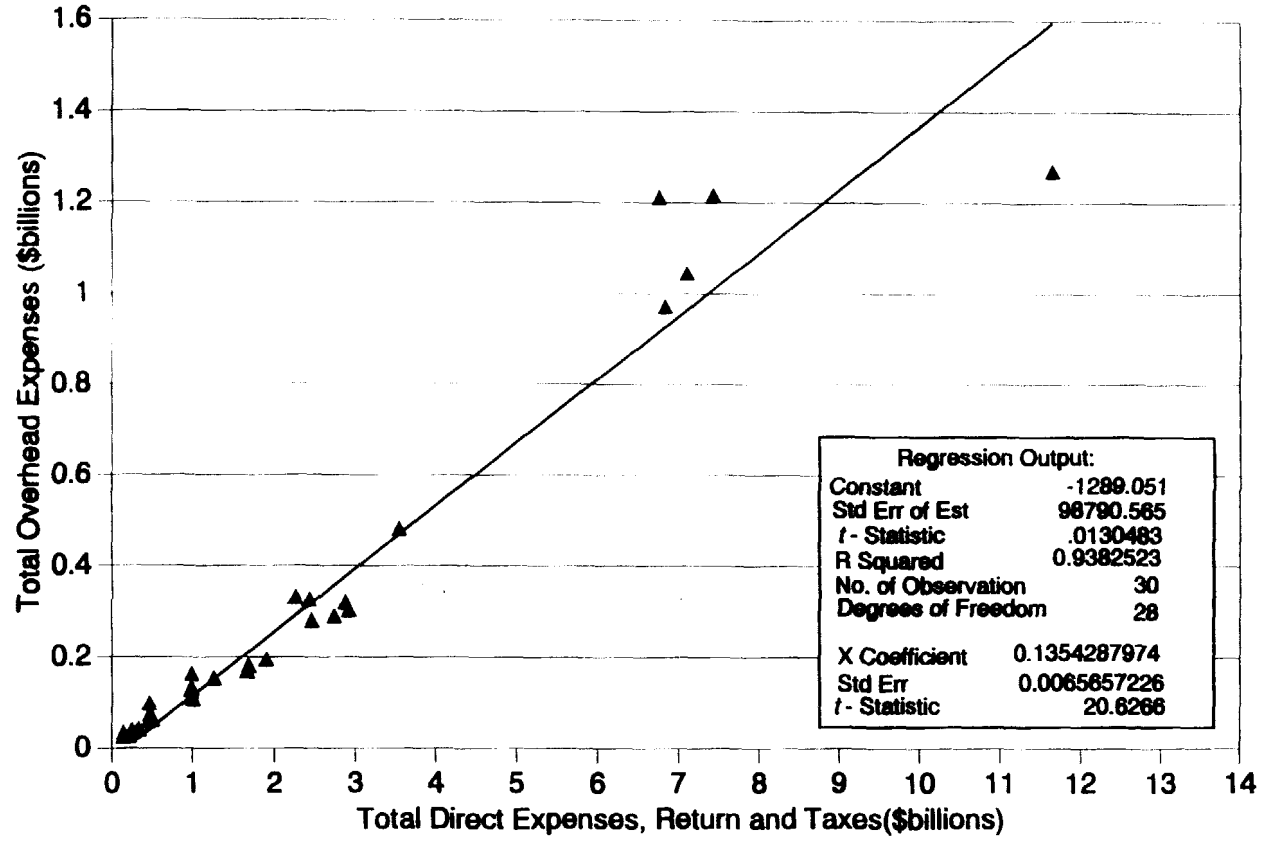
LEC Overhead Expenses Vary in Proportion to Directly Assigned Costs
Total Overhead Expenses ($billions)
1.6
1.4
1.2
1
0.8
0.6
0.4
0.2
0
0 1 2 3 4 5 6 7 8 9 10 11 12 13 14
Total Direct Expenses, Return and Taxes($billions)
Regression Output:
Constant -1289.051
Std Err of Est 98790.565
t - Statistic .0130483
R Squared 0.9382523
No. of Observation 30
Degrees of Freedom 28
X Coefficient 0.1354287974
Std Err 0.0065657226
t - Statistic 20.6266

Table 1

RELATIONSHIP OF OVERHEAD EXPENSES TO TOTAL DIRECT EXPENSES (000)

	Total Overhead Expenses[1]	Total Direct Expenses, Return and Taxes	Overhead as a % of Total Direct Expenses, Return and Taxes
NV Bell	$26,841	$142,472	18.84%
Contel NY	35,496	151,978	23.36%
BA - DE	28,483	218,291	13.05%
Rochester Tel.	41,957	259,503	16.17%
Contel CA	43,540	338,248	12.87%
GTE-HI	61,386	455,280	13.48%
GTE-Midwest	75,817	472,109	16.06%
BA-DC	65,554	484,356	13.53%
Cin. Bell	100,518	465,617	21.59%
BA-WV	64,909	508,684	12.76%
WI Bell	128,832	979,975	13.15%
IN Bell	110,089	1,006,396	10.94%
GTE FLA	133,643	985,520	13.56%
GTE-South West	164,270	993,474	16.53%
SNET	155,511	1,264,382	12.30%
BA - VA	170,905	1,666,653	10.25%
BA - MD	182,808	1,691,240	10.81%
OH Bell	196,575	1,903,657	10.33%
GTE-North	332,389	2,258,779	14.72%
MI Bell	280,470	2,466,242	11.37%
GTE - CA	327,873	2,430,049	13.49%
Ill Bell	291,880	2,747,155	10.62%
BA-PA	321,611	2,884,478	11.15%
BA-NJ	304,012	2,929,628	10.38%
NET	482,632	3,543,877	13.62%
NY Tel	973,074	6,832,165	14.24%
Pac Bell	1,213,208	6,757,287	17.95%
SWB	1,046,630	7,106,857	14.73%
USWEST	1,218,024	7,424,470	16.41%
Bell South	1,272,152	11,656,714	10.91%

Note:
1. Total Corporate Operations Expenses include Account's: 6711, 6712, 6721-6728, 7370,7540

Sources:
FCC Statistics of Communications Common Carriers, 1993/1994 Edition, Table 2.1 and Table 2.9

CERTIFICATE OF SERVICE

I, Catherine P. McCarthy, hereby certify that a true and correct copy of the foregoing Comments of Time Warner Communications Holdings, Inc. were served, via hand delivery 4th day of March, 1996 to:

Janice Myles
Common Carrier Bureau
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, D.C. 20554

Regina M. Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, D.C. 20554

ITS, Inc.
2100 M Street, N.W.
Room 140
Washington, D.C. 20037

Catherine P. McCarthy

Catherine P. McCarthy